

tmd3574/kp
Return Date & Time:
MAY 18, 2011 9:00AM

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

KAMRUN NESSA HAIDER,

Debtor.

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Chapter 13 Case No: 109-49421-JF

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this court before the Honorable Jerome Feller, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, New York, Courtroom 3554, on MAY 18, 2011 at 9:00AM, or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. Section 1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than seven (7) days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York
April 26, 2011

s/ Krista M. Preuss
KRISTA M. PREUSS, ATTORNEY FOR
MARIANNE DeROSA, CHPT 13 TRUSTEE
100 JERICHO QUADRANGLE, SUITE 208
JERICHO, NY 11753
(516) 622-1340

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IN RE:

Chapter 13 109-49421-JF

KAMRUN NESSA HAIDER,

APPLICATION

Debtor.

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TO THE HONORABLE, JEROME FELLER, U.S. BANKRUPTCY JUDGE:

KRISTA M. PREUSS, ESQ., attorney for Marianne Derosa, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on October 27, 2009, and, thereafter, MARIANNE DEROSA was duly appointed and qualified as Trustee.

2. The Debtor's original Chapter 13 Plan, dated November 25, 2009 and docketed as number 17, (hereinafter the "Plan") provided for payments of \$725.00 each month commencing November 2009 through and including October 2014. The Plan further provided pre-petition arrears in the amount of \$39,554.17 to be paid through the plan to Deutsche Bank National Trustee Company, a reference of "Second Lien Status subject to the directions of the Court," and no distribution to unsecured creditors. The Plan further provided that the Debtor would furnish the Trustee with copies of federal and state tax returns, and turnover refunds, if any.

On November 16, 2010 the Debtor filed an Amended Chapter 13 Plan, which is before this Court to be confirmed, docketed as number 36 (hereinafter the "Amended Plan"). Relevant changes are as follows:

- increased plan payments from \$725.00 to \$800.00;
- added reference to New York City Water Board secured claim;
- added reference to Order entered on October 18, 2010 deeming loan held by Home Equity Servicing unsecured; and
- changed reference to general unsecured creditors to state they will receive a pro rata distribution.

3. As of the date of this application, Debtor is in arrears to the Trustee \$850.00. This a result of the increased payments as referenced in the Amended Plan.

4. Additionally, the Debtor's proposed Chapter 13 Plan requires a payment of \$800.00 per month which that is higher than the Debtor's disposable income indicated by amended Schedule I and Schedule J of \$725.00 and, as such, it cannot be confirmed.

5. Furthermore, the Debtor's Schedule J, filed with the Court on November 25, 2009 does not provide for reasonable and necessary living expenses for the Debtor's household making the Plan further infeasible.

6. There has been an unreasonable delay by the Debtor that is prejudicial to creditors as this case has been pending since October 2009 without the Debtor having proposed a confirmable plan.

7. During the pendency of this bankruptcy estate, the Trustee has incurred costs and expenses in the ordinary course of administering this case and seeks reimbursement of \$250.00 to cover these expenses. Said sum to be deducted from the Debtor's net receipts, if any.

8. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. §1307(c).

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order dismissing this Chapter 13 case, and granting the Chapter 13 Trustee the sum of \$250.00 to be deducted from the Debtor's net receipts, if any, for administrative costs and expenses incurred during the pendency of this case, and for such other and further relief as may seem just and proper.

Dated: Jericho, New York
April 26, 2011

s/ Krista M. Preuss
Krista M. Preuss, Attorney for
Marianne DeRosa, Chpt 13 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

Chapter 13 Case No: 109-49421-JF

KAMRUN NESSA HAIDER,

CERTIFICATE OF SERVICE
BY MAIL

Debtor.

-----X

This is to certify that I, Krista M. Preuss, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

KAMRUN NESSA HAIDER
86-32 125 Street
Richmond Hill, NY 11418

KARAMVIR DAHIYA, ESQ.
Dahiya Law Offices, LLC
350 Broadway, Ste 412
New York, NY 10013

SAXON MORTGAGE SERVICES INC
1270 Northland Dr. Ste 200
Mendota Heights, MN 55120

AMERICA SERVICING COMPANY
C/O Steven J. Baum, PC/Buczkowski
900 Merchants Concourse, Ste 412
Westbury, NY 11590

GE MONEY BANK
Recovery Mangagement Systems Corp
25 S.E. 2nd Avenue, Ste 1120
Miami, FL 33131

This April 26, 2011

/s/Krista M. Preuss

Krista M. Preuss, Staff Attorney
Office of the Standing Chapter 13 Trustee
Marianne DeRosa, Esq.
100 Jericho Quadrangle, Suite 208
Jericho, New York 11753
(516) 622-1340

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NOTICE OF MOTION, APPLICATION
and
CERTIFICATE OF SERVICE

MARIANNE DeROSA, TRUSTEE
100 JERICO QUADRANGLE, SUITE 208
JERICO, NY 11753
(516) 622-1340

revised
03/09/06